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## IN THE SENATE

## SENATE BILL NO. 1339

## BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT RELATING TO OIL AND GAS; AMENDING SECTION 47-317, IDAHO CODE, TO REMOVE PROVISIONS REGARDING EMPLOYMENT OF PERSONNEL AND CONTRACTING FOR SER-VICES, TO PROVIDE FOR THE AUTHORITY OF THE DEPARTMENT OF LANDS, TO REMOVE CERTAIN PROVISIONS REGARDING HEARINGS, TO REMOVE PROVISIONS RELATING TO THE DESIGNATION OF HEARING OFFICERS AND CONTESTED HEARINGS AND TO PROVIDE THAT THE COMMISSION SHALL FOLLOW CERTAIN PROCEDURES; AMENDING SECTION 47-318, IDAHO CODE, TO REVISE DEFINITIONS AND TO DE-FINE TERMS; AMENDING SECTION 47-320, IDAHO CODE, TO PROVIDE A PROCEDURE REGARDING APPLICATIONS FOR PERMITS OR CERTAIN AUTHORIZATIONS TO DRILL OR TREAT WELLS AND TO PROVIDE THAT THE DEPARTMENT OF LANDS SHALL COL-LECT SPECIFIED FEES; AMENDING SECTION 47-321, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT SHALL HAVE SPECIFIED RESPONSIBILITIES ASSOCIATED WITH SPACING UNITS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 47-322, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT SHALL HAVE SPEC-IFIED RESPONSIBILITIES REGARDING INTEGRATION, TO REVISE PROVISIONS REGARDING INTEGRATION, TO PROVIDE FOR THE DESIGNATION OF OPERATORS FOR INTEGRATED UNITS, TO PROVIDE FOR OPTIONS TO BE SET FORTH IN INTEGRATION ORDERS, TO PROVIDE FOR APPLICATIONS FOR ORDERS OF INTEGRATION, TO PRO-VIDE FOR NOTICE TO CERTAIN OWNERS, TO PROVIDE FOR THE CONFIDENTIALITY OF CERTAIN INFORMATION AND TO PROVIDE THAT APPLICATIONS SHALL BE SUBJECT TO SPECIFIED PROCEDURES; AMENDING SECTION 47-323, IDAHO CODE, TO PRO-VIDE THAT THE DEPARTMENT SHALL HAVE SPECIFIED RESPONSIBILITIES REGARD-ING UNIT OPERATIONS AND TO REVISE PROVISIONS REGARDING APPLICATIONS FOR UNIT OPERATIONS; AMENDING SECTION 47-324, IDAHO CODE, TO REVISE AND TO SET FORTH PROVISIONS AND PROCEDURES ASSOCIATED WITH RULEMAKING, COM-PLAINTS, APPLICATION FOR ORDERS, PETITIONS, ORDERS AND APPEALS AND TO PROVIDE FOR JUDICIAL REVIEW OF ACTIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 47-317, Idaho Code, be, and the same is hereby amended to read as follows:

47-317. OIL AND GAS CONSERVATION COMMISSION CREATED -- POWERS -- LIMIT ON LOCAL RESTRICTIONS -- ATTORNEY GENERAL. (1) There is hereby created an oil and gas conservation commission of the state of Idaho within the department of lands. The commission shall consist of five (5) members appointed by the governor with the advice and consent of the senate. The members shall serve at the pleasure of the governor. One (1) member shall be knowledgeable in oil and gas matters, one (1) member shall be knowledgeable in geological matters, one (1) member shall be knowledgeable in water matters, one (1) member shall be a private landowner who owns mineral rights with the surface in a county with oil and gas activity and one (1) member shall be a private landowner who does not own mineral rights.

(2) The term of office of each member of the commission shall be four (4) years, except that upon July 1, 2013, the governor shall appoint one (1) member for a term of one (1) year, one (1) member for a term of two (2) years, one (1) member for a term of three (3) years and two (2) members for terms of four (4) years. After the initial appointment, the governor shall appoint members to serve in office for a term of four (4) years commencing on July 1. A vacancy shall be filled by appointment for the unexpired term in the same manner provided for an appointment to the full term.

- (3) The commission shall annually elect a chairman and a vice chairman from their membership. Such officers shall hold their respective offices until their successors are elected. If a vacancy occurs in either office, the commission shall elect a member to fill such office for the remainder of the term.
- (4) The commission shall meet at least annually and thereafter on dates set by the commission. A majority of the voting members shall constitute a quorum.
- (5) The members of the commission shall be compensated as provided in section 59-509(n), Idaho Code.
- (6) Unless the commission appoints another person to be the secretary of the commission, the director of the department of lands shall be the secretary of the commission.
- (7) The commission may employ personnel as may be deemed necessary, prescribe their duties and fix their compensation. In the alternative, the commission may contract with the department of lands for services The department of lands shall have the power to exercise, under the general control and supervision of the commission, all of the rights, powers and duties vested by law in the commission, except those provided in sections 47-324 and 47-325(c), Idaho Code.
- The commission shall have and is hereby given jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this act, and shall have power and authority to make and enforce rules, regulations and orders, and do whatever may reasonably be necessary to carry out the provisions of this act. Any delegation of authority to any other state officer, board or commission to administer any and all other laws of this state relating to the conservation of oil and gas is hereby rescinded and withdrawn and such authority is hereby unqualifieldly conferred upon the commission, as herein provided. Any person, or the attorney general, on behalf of the state, may apply for a hearing before the commission, or the commission may initiate proceedings, upon any question relating to the administration of this act, and jurisdiction is hereby conferred upon the commission to hear and determine the same and enter its rule, regulation or order with respect thereto. The commission may designate hearing officers who shall have the power and authority to conduct hearings in the name of the commission at any time and place in accordance with the provisions of chapter 52, title 67, Idaho Code. Provided however, that when the commission is exercising its duties and authorities granted under this chapter, such actions shall not be considered to be contested cases as defined in subsection (6) of section 67-5201, Idaho Code, and section 67-5240, Idaho Code, unless the commission, in its discretion, determines that a contested case hearing would be of assistance to the commission in the exercise

of its duties and authorities The commission shall follow procedures on applications as provided in section 47-324, Idaho Code, except as provided in sections 47-320(1)(a) and 47-325(c), Idaho Code.

- (9) It is the intent of the legislature to occupy the field of the regulation of oil and gas exploration and production with the limited exception of the exercise of planning and zoning authority granted cities and counties pursuant to chapter 65, title 67, Idaho Code.
- (10) To implement the purpose of the oil and gas conservation act, and to advance the public interest in the orderly development of the state's oil and gas resources, while at the same time recognizing the responsibility of local governments to protect the public health, safety and welfare, it is herein provided that:
  - (a) The commission will notice the respective city or county with jurisdiction upon receipt of an application and will remit, electronically, a copy of all application materials.
  - (b) No ordinance, resolution, requirement or standard of a city, county or political subdivision, except a state agency with authority, shall actually or operationally prohibit the extraction of oil and gas; provided however, that extraction may be subject to reasonable local ordinance provisions, not repugnant to law, which protect public health, public safety, public order or which prevent harm to public infrastructure or degradation of the value, use and enjoyment of private property. Any ordinance regulating extraction enacted pursuant to chapter 65, title 67, Idaho Code, shall provide for administrative permitting under conditions established by ordinance, not to exceed twenty-one (21) days, unless extended by agreement of the parties or upon good cause shown.
  - (c) No ordinance, resolution, requirement or standard of a city, county or political subdivision, except a state agency with authority, shall actually or operationally prohibit construction or operation of facilities and infrastructure needed for the post-extraction processing and transport of gas and oil. However, such facilities and infrastructure shall be subject to local ordinances, regulations and permitting requirements, not repugnant to law, as provided in chapter 65, title 67, Idaho Code.
- (11) The commission may sue and be sued in its administration of this act in any state or federal district court in the state of Idaho having jurisdiction of the parties or of the subject matter.
- (12) The attorney general shall act as the legal advisor of the commission and represent the commission in all court proceedings and in all proceedings before it, and in any proceeding to which the commission may be a party before any department of the federal government.
- SECTION 2. That Section 47-318, Idaho Code, be, and the same is hereby amended to read as follows:
- 47-318. DEFINITIONS. Unless the context otherwise requires, the terms defined in this section shall have the following meaning when used in this act:
  - (a) "Commission" means the oil and gas conservation commission.

- (b) "Condensate" means the liquid produced by the condensation of a vapor or gas either after it leaves the reservoir or while still in the reservoir.
- (c) "Correlative rights" means the owners' or producers' just and equitable share opportunity of each owner in a pool to produce his just and equitable share of oil and gas in a pool without waste.
  - (d) "Department" means the Idaho department of lands.

- (e) "Field" means the general area underlaid by one (1) or more pools.
- $\overline{(\text{ef})}$  "Gas" means any petroleum hydrocarbon existing in the gaseous phase, including condensate because it originally existed in the gaseous phase.
- ( $\pm g$ ) "Market value" means the price at the time of sale, in cash or on terms reasonably equivalent to cash, for which the oil or gas should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus from either party. The costs of marketing, transporting and processing oil and gas produced shall be borne entirely by the producer, and such cost shall not reduce the producer's tax directly or indirectly.
- (gh) "Mineral interest" means the right to explore, drill or produce oil or gas lying beneath the surface of property.
- (i) "Oil" or "crude oil" means petroleum oil and other hydrocarbons, regardless of gravity, that are produced at the well in liquid form by ordinary production methods and are not the result of gas condensation before or after it leaves the reservoir.
  - (hj) "Oil and gas" means oil or gas or both.
- (k) "Operator" means any duly authorized person who is in charge of the development of a lease, pool, or spacing or unitized area, or the operation of a producing well.
- $(\pm \underline{1})$  "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas that he produces therefrom, either for himself or for himself and others.
- $(j\underline{m})$  "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representatives of any kind, and includes any government or any political subdivision of any agency thereof. The masculine gender, in referring to a person, includes the feminine and the neuter genders.
- $(\underline{*n})$  "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure that is completely separated from any other zone in the same structure is a pool.
- $(\underline{+o})$  "Producer" means the owner of a well or wells capable of producing oil or gas or both.
- $(\underline{mp})$  "Reservoir" means a subsurface volume of porous and permeable rock in which oil or gas has accumulated.
- (q) "Uncommitted owner" means one who is not leased or otherwise contractually obligated to the operator.
- $(\underline{nr})$  "Waste" as applied to gas shall include the escape, blowing or releasing, directly or indirectly, into the open air of gas from wells productive of gas only, or gas in an excessive or unreasonable amount from wells producing oil or both oil and gas; and the production of gas in quantities or

in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil or gas that might ultimately be produced; excepting gas that is reasonably necessary in the drilling, completing and testing of wells and in furnishing power for the production of wells.

- (es) "Waste" as applied to oil means and includes underground waste; inefficient, excessive or improper use or dissipation of reservoir energy, including gas energy and water drive; surface waste, open-pit storage and waste incident to the production of oil in excess of the producer's above-ground storage facilities and lease and contractual requirements, but excluding storage (other than open-pit storage) reasonably necessary for building up and maintaining crude stocks and products thereof for consumption, use and sale; the locating, drilling, equipping, operating or producing of any well in a manner that causes, or tends to cause, reduction of the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations.
- $(\underline{p}\underline{t})$  The use of the plural includes the singular, and the use of the singular includes the plural.
- SECTION 3. That Section 47-320, Idaho Code, be, and the same is hereby amended to read as follows:
- 47-320. PERMIT TO DRILL OR TREAT A WELL -- FEES. (1) It shall be unlawful to commence operations for the drilling or treating of a well for oil or gas without first giving notice to the commission of intention to drill or treat and without first obtaining a permit from the commission under such rules and regulations as may be reasonably prescribed by the commission and by paying to the commission a filing and service fee as provided by this section. No permit may be issued by the commission until the commission shall notify the director of the department of water resources and said director shall have fifteen (15) days from the date of receipt of such notification from the commission to recommend conditions he believes necessary to protect fresh water supplies.
  - (a) Any request for a permit or authorization as set forth in subsection (3) (a), (b), (c), (d), (e), (f), (g), (m), (n) or (o) of this section shall be made by application to the department of lands, and processed as provided in this section.
  - (b) The department shall notify the applicant within five (5) business days of receipt of an application if the application is administratively incomplete, and in such notice shall identify missing items to be supplied in order to make the application complete.
  - ter resources regarding permits to drill or treat a well. The director of water resources shall have ten (10) business days from the date of receipt of such notification from the department of lands to recommend conditions he believes necessary to protect fresh water supplies.
  - (d) Applications submitted under this section shall be posted on the department of lands's website for ten (10) calendar days for a written comment period.
  - (e) The department of lands shall approve or deny the application to drill or treat a well within fifteen (15) business days of receipt of a complete application.

- $\underline{\text{(f)}}$  The department's decision made under this section may be appealed to the commission by the applicant pursuant to the procedure in section 47-324 (d), (e), (f) and (g), Idaho Code.
- $\underline{(2)}$  Upon issuance of any permit, a copy thereof, including any limitations, conditions, controls, rules or regulations attached thereto for the protection of fresh water supplies as required in section 47-319, Idaho Code, shall be forwarded to the director of the department of water resources.

- (23) The <u>commission department</u> shall collect the following fees, which shall be remitted to the state treasurer for deposit in the oil and gas conservation fund and shall be used exclusively to pay the costs and expenses incurred in connection with the administration and enforcement of this chapter:
  - (a) Application for a permit to drill a well......\$2,000 (c) Application to plug and abandon a well, if not completed within one (1) year from issuance of permit to drill a well ..............................500 (d) Application to treat a well, if separate from an application for a (e) Application to construct a pit, if separate from an application for (f) Application to directionally drill a well, if separate from an ap-(q) Application for a multiple zone completion, if separate from an ap-(h) Application for an exceptional well location, if separate from an (i) Application to change the size or shape of a spacing unit .....1,300 (j) Application to establish or amend a field-wide spacing order .1,300 (m) Application for a seismic operations permit covering less than Application for a seismic operations permit covering between twelve (12) miles and twenty-four (24) miles of a 2D survey, or up to Application for a seismic operations permit covering more than twenty-four (24) miles of a 2D survey, or more than seventy-two (72)
- SECTION 4. That Section 47-321, Idaho Code, be, and the same is hereby amended to read as follows:
- 47-321. SPACING UNITS. (1) The <u>commission department</u> shall promptly establish spacing units for each pool except in those pools that have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development.
- (2) An order establishing spacing units shall specify the size and shape of the units, which shall be such as will, in the opinion of the commission department, result in the efficient and economical development of the pool as a whole. Any unit established by the commission department

shall be geographic. The geographic boundaries of the unit shall be described in accordance with the public land survey system. Except where circumstances, geologic or otherwise, affecting the orderly development of a pool reasonably require, or as provided in paragraph (b) of this subsection, the size of the spacing units shall not be smaller than the maximum area that can be efficiently and economically drained by one (1) well; provided:

- (a) If, at the time of a hearing to establish spacing units, there is not sufficient evidence from which to determine the area that can be efficiently and economically drained by one (1) well, the commission department may make an order establishing temporary spacing units for the orderly development of the pool pending the obtaining of the information required to determine what the ultimate spacing should be.
- (b) Where the federal agency administering federal minerals that would otherwise be included in a spacing unit has not leased or has failed to offer such federal minerals for lease in accordance with 30 U.S.C. section 226 and 43 CFR 3120.1-2(a), such federal minerals may be excluded from the unit upon application or upon the commission's department's own motion determination.
- (3) Except where circumstances, geologic or otherwise, affecting the orderly development of a pool reasonably require, spacing units shall be of approximately uniform size and shape for the entire pool. The commission department may establish spacing units of different sizes or shapes for different parts of a pool or may grant exceptions to the size or shape of any spacing unit or units or may change the sizes or shape of one (1) or more existing spacing units.
- (4) An order establishing spacing units shall direct that no more than one (1) well shall be drilled to and produced from the common source of supply on any unit, and shall specify the location for the drilling of a well thereon, in accordance with a reasonably uniform spacing pattern, with necessary exceptions for wells drilled or drilling at the time of the filing of the application. If the commission department finds that a well drilled at the prescribed location would not be likely to produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such well, or for other good cause shown, the commission department is authorized to make an order permitting the well to be drilled at a location other than that prescribed by such spacing order. Application for an exception shall be filed with the commission department and may be granted where it is shown that good cause for such exception exists and that consent to such exception has been given by the operators of all drilling units directly or diagonally offsetting the drilling unit for which an exception is requested, and, as to the lands upon which drilling units have not been established, by the majority of mineral interest owners of those lands which would be included in directly or diagonally offsetting drilling units under said order, if said order were extended to include such additional lands.
- (5) An order establishing spacing units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the commission department from time to time to include additional lands determined to be underlaid by such pool or to exclude lands determined not to be underlaid by such pool.

(6) An order establishing spacing units may be modified by the commission department to change the size or shape of one (1) or more spacing units, or to permit the drilling of additional wells on a reasonably uniform pattern.

- (7) Upon the filing of an application to establish spacing units, no additional well shall be commenced for production from the pool until the order establishing spacing units has been made, unless the commencement of the well is authorized by order of the commission department.
- SECTION 5. That Section 47-322, Idaho Code, be, and the same is hereby amended to read as follows:
- INTEGRATION OF TRACTS -- ORDERS OF COMMISSION DEPARTMENT. (a) When two (2) or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of a spacing unit, the interested persons may integrate their tracts or interests for the development and operation of the spacing unit. In the absence of voluntary integration, the commission department, upon the application of any interested person owner in that proposed spacing unit, shall make an order integrating integration of all tracts or interests in the spacing unit for the drilling of a well or  $wells_{,}$  development and operation thereof and for the sharing of production therefrom. The commission department, as a part of the order establishing a spacing unit or units, may prescribe the terms and conditions upon which the royalty interests in the unit or units shall, in the absence of voluntary agreement, be deemed to be integrated without the necessity of a subsequent separate order integrating the royalty interests. Each such integration order shall be upon terms and conditions that are just and reasonable.
- (b) All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of a spacing unit for which an integration order has been entered, shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the spacing unit by the several owners thereof. That portion of the production allocated to a separately owned tract included in a spacing unit shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon.
- (c) Each such integration order shall authorize the drilling, equipping, and operation, or operation, of a well on the spacing unit; shall provide who may drill and operate the well designate an operator for the integrated unit; shall prescribe the time and manner in which all the owners in the spacing unit may elect to participate therein; and shall make provision for the payment by all those who elect to participate therein; of the reasonable actual cost thereof, plus a reasonable charge for supervision and interest. If requested, eEach such integration order shall provide for one or more just and equitable alternatives whereby an owner who does not elect to participate in the risk and cost of the drilling and operation, or operation, of a well may elect to surrender his leasehold interest to the participating owners on some reasonable basis and for a reasonable consideration which, if not agreed upon, shall be determined by the commission, or may elect to participate in the drilling and operation, or operation, of the

well, on a limited or carried basis upon terms and conditions determined by the commission to be just and reasonable the five following options:

- (i) Working interest owner. An owner who elects to participate as a working interest owner shall pay the proportionate share of the actual costs of drilling and operating a well allocated to the owner's interest in the spacing unit. Working interest owners who share in the costs of drilling and operating the well are entitled to their respective shares of the production of the well. The operator of the integrated spacing unit and working interest owners shall enter into a joint operating agreement approved by the department in the integration order.
- Nonconsenting working interest owner. An owner who refuses to share in the risk and actual costs of drilling and operating the well, but desires to participate as a working interest owner, is a nonconsenting working interest owner. Nonconsenting working interest owners are entitled to their respective shares of the production of the well, not to exceed one-eighth (1/8) royalty, until the operator of the integrated spacing unit has recovered up to three hundred percent (300%) of the nonconsenting working interest owner's share of the cost of drilling and operating the well under the terms set forth in the integration order. After all the costs have been recovered by the consenting owners in the spacing unit, the nonconsenting owner is entitled to his respective shares of the production of the well, and shall be liable for his pro rata share of costs as if the nonconsenting owner had originally agreed to pay the costs of drilling and operating the well. The operator of the integrated spacing unit and nonconsenting working interest owners shall enter into a joint operating agreement approved by the department in the integration order.
- (iii) Leased. An owner may enter into a lease with the operator of the integrated spacing unit under the terms and conditions in the integration order. The owner shall receive one-eighth (1/8) royalty. The operator of an integrated spacing unit shall pay a leasing owner the same bonus payment per acre as the operator originally paid to other owners in the spacing unit prior to the issuance of the integration order.
- (iv) Objector. If an owner objects to any participation or involvement of any kind in the unit, such owner may elect to be an objector. An objecting owner's interest will be deemed leased under the terms and conditions in the integration order. The owner shall receive one-eighth (1/8) royalty. Provided however, an objecting owner may elect to have any funds to which he would otherwise be entitled transferred to the STEM action center.
- (v) Deemed leased. If an owner fails to make an election within the election period set forth in the integration order, such owner's interest will be deemed leased under the terms and conditions in the integration order. The owner shall receive one-eighth (1/8) royalty. The operator of an integrated spacing unit shall pay a leasing owner the same bonus payment per acre as the operator originally paid to other owners in the spacing unit prior to the issuance of the integration order.

If one or more of the owners shall drill, equip, and operate, or operate, or pay the costs of drilling, equipping, and operating, or operating, a well for the benefit of another person as provided for in an order of integration,

then such owners or owner shall be entitled to the share of production from the spacing unit accruing to the interest of such other person, exclusive of a royalty not to exceed one-eighth (1/8) of the production, until the market value of such other person's share of the production, exclusive of such royalty, equals the sums payable by or charged to the interest of such other person. If there is a dispute as to the costs of drilling, equipping, or operating a well, the commission department shall determine such costs. In instances where a well is completed prior to the integration of interests in a spacing unit, the sharing of production shall be from the effective date of the integration, except that, in calculating costs, credit shall be given for the value of the owner's share of any prior production from the well.

- $\underline{\text{(d)}}$  An application for an order integrating the tracts or interests in a spacing unit shall substantially contain and be limited to only the following:
  - (i) The applicant's name and address;

- (ii) A description of the spacing unit to be integrated;
- (iii) A geologic statement concerning the likely presence of hydrocarbons;
- (iv) A statement that the proposed drill site is leased;
- (v) A statement of the proposed operations for the spacing unit, including the name and address of the proposed operator;
- (vi) A proposed joint operating agreement and a proposed lease form;
- (vii) A list of all uncommitted owners in the spacing unit to be integrated under the application, including names and addresses;
- (viii) An affidavit indicating that at least fifty-five percent (55%) of the mineral interest acres in the spacing unit support the integration application by leasing or participating as a working interest owner;
- (ix) An affidavit stating the highest bonus payment paid to a leased owner in the spacing unit being integrated prior to filing the integration application; and
- (x) A resume of efforts documenting the applicant's good faith efforts on at least two (2) separate occasions within a period of time no less than sixty (60) days to inform uncommitted owners of the applicant's intention to develop the mineral resources in the proposed spacing unit and desire to reach an agreement with uncommitted owners in the proposed spacing unit. Provided however, if any owner requests no further contact from the applicant, the applicant will be relieved of further obligation to attempt contact to reach agreement with that owner. At least one (1) contact must be by certified U.S. mail sent to an owner's last known address. If an owner is unknown or cannot be found, the applicant must publish a legal notice of its intention to develop and request that the owner contact the applicant in a newspaper in the county where the proposed spacing unit is located. The resume of efforts should indicate the applicant has made reasonable efforts to reach an agreement with all uncommitted owners in the proposed spacing unit. Reasonable efforts are met by complying with this subsection.

An application shall not be required to be in any particular format. An application shall not be denied or refused for incompleteness if it complies substantially with the foregoing informational requirements.

(e) At the time the integration application is filed with the department, the applicant shall certify that, for uncommitted owners who are unknown or cannot be found, a notice of the application was published in a newspaper in the county where the proposed spacing unit is located. Each published notice shall include notice to the affected uncommitted owner of the opportunity to respond to the application, and the deadline by which a response must be filed with the department.

- (d) (vii) of this section and the names and addresses of the uncommitted owners pursuant to subsection (d) (x) of this section shall be deemed trade secrets and kept confidential by the department until the well is producing in the proposed spacing unit, and thereafter shall be subject to disclosure pursuant to chapter 1, title 74, Idaho Code, provided that the information regarding an uncommitted owner shall be subject to disclosure to that owner.
- (g) An application for integration shall be subject to the procedures set forth in section 47-324, Idaho Code.
- SECTION 6. That Section 47-323, Idaho Code, be, and the same is hereby amended to read as follows:
- 47-323. UNIT OPERATIONS. (1) An agreement for the unit or cooperative development or operation of a field, pool, or part thereof, may be submitted to the commission department for approval as being in the public interest or reasonably necessary to prevent waste or protect correlative rights. Such approval shall constitute a complete defense to any suit charging violation of any statute of the state relating to trusts and monopolies on account thereof or on account of operations conducted pursuant thereto. The failure to submit such an agreement to the commission department for approval shall not for that reason imply or constitute evidence that the agreement or operations conducted pursuant thereto are in violation of laws relating to trusts and monopolies.
- (2) The <u>commission department</u>, upon its own <u>motion determination</u> or upon application of an owner, shall conduct a hearing to consider the need for unit operation of an entire pool or portion thereof, to increase ultimate recovery of oil and gas from that pool or portion thereof. The <u>commission</u> department shall issue an order requiring unit operation if it finds that:
  - (a) Unit operation of the pool or portion thereof is reasonably necessary to prevent waste or to protect correlative rights;
  - (b) Unit operation of the pool or portion thereof is reasonably necessary for maintaining or restoring reservoir pressure, or to implement cycling, water flooding, enhanced recovery, horizontal drilling, de-watering or a combination of these operations or other operations or objectives to be cooperatively pursued with the goal of increasing the ultimate recovery of oil and gas; and
  - (c) The estimated cost to conduct the unit operation will not exceed the value of the estimated recovery of additional oil and gas resulting from unit operation.
- (3) An application for requesting an order providing for the operation as a unit of one (1) or more pools or parts thereof in a field shall contain:
  - (a) A plat map showing the proposed unit, the existing spacing units, and well(s) within the units;

(b) The names and addresses of all persons owning mineral interests and working interests in the proposed unit;

- (c) An affidavit that the applicant, by certified mail, notified all persons owning unleased mineral interests and working interests in the proposed unit at least sixty (60) days prior to filing the application with the commission department of the applicant's intention to make the application;
- (d) A proposed plan of unit operations for the proposed unit that contains the information in subsection (5) of this section; and
- (e) A proposed operating agreement that is consistent with the proposed plan of unit operations.
- (4) At the time the An application for unit operations is filed with the commission, the applicant shall certify that a copy of the application was served on all unleased mineral interest and working interest owners in the proposed unit. The application may be served by personal delivery or certified U.S. mail, return receipt requested; provided however, if an owner cannot be located, the application may be served by publishing a notice in a newspaper of general circulation reasonably likely to give notice to the owner once a week for two (2) consecutive weeks and mailing the application to the last known address of the owner. The unleased mineral interest and working interest owners shall have twenty-one (21) days from the date of service of the application to file a response to the application with the commission. The commission will schedule a hearing on the application for unit operations and will give notice of the hearing to the applicant and all owners who file a response to the application with the commission shall be subject to the procedures set forth in section 47-324, Idaho Code.
- (5) An order for a unit operation must be upon just and reasonable terms and conditions and shall prescribe a plan for unit operations that include all of the following:
  - (a) A description of the vertical and horizontal limits of the unit area;
  - (b) A statement of the nature of the operation contemplated;
  - (c) A provision for the supervision and conduct of the unit operation that designates an operator of the unit and provides a means to remove the operator and designate a successor operator;
  - (d) A provision to protect correlative rights, allocating to each separately owned tract in the unit area a just and equitable share of the production that is produced and saved from the unit area, other than production used or unavoidably lost in the conduct of the unit operation;
  - (e) A provision for credits and charges to adjust among working interest owners in the unit area for their interest in wells, tanks, pumps, machinery, materials and equipment that contribute to the unit operation;
  - (f) A provision establishing how the costs of unit operation, including capital investments and costs of terminating the unit operation, shall be determined and charged to each working interest owner or the interest of each owner, including a provision establishing how, when and by whom the share of unit production allocated to an owner who does not pay the share of those costs charged to that owner or to the interest of that

owner may be sold and the proceeds applied to the payment of that owner's share of those costs, and how accounts will be settled upon termination of the unit;

- (g) A provision, if necessary, for carrying or otherwise financing an owner who elects to be carried or otherwise financed, which allows owners who carry or otherwise finance to recover up to three hundred percent (300%) of the unit costs attributed to an owner who elects to be carried or otherwise financed payable out of that owner's share of the production;
- (h) A time when the unit operation is to commence and the manner in which, and the circumstances under which, the unit operation is to terminate and the unit is to be dissolved; and
- (i) Additional provisions found to be appropriate to carry on the unit operation, to prevent waste and to protect correlative rights.
- (6) An order for a unit operation may provide for a unit operation of less than the whole of a pool so long as the unit area is of size and shape reasonably required for that purpose and the conduct thereof will have no significant adverse effect upon other portions of the pool.
- (7) The <u>commission department</u>, upon its own <u>motion determination</u> or upon the application of an owner, may for good cause terminate a unit operation and dissolve the unit on just and equitable terms. If not terminated earlier, the unit operation shall terminate upon final cessation of production from the pool or unitized portion thereof, the plugging and abandonment of unit wells and facilities, and reclamation of the surface.
- (8) An order requiring a unit operation shall not become effective until the plan for unit operations approved by the commission department has been signed and approved in writing by the owners who, under the commission's department's order, will be required to pay at least fifty-five percent (55%) of the costs of the unit operation, and also signed and approved in writing by the working interest owners of at least fifty-five percent (55%) of the production of the unit operations, and the commission department has made a finding in the order that the plan for unit operations has been so approved.
- (9) An order providing for unit operation may be amended by an order of the commission department in the same manner and subject to the same conditions as an original order providing for the unit operation.
- (10) The <u>commission</u> <u>department</u> may issue an order for the unit operation of a pool or pools or parts thereof that include a unit created by a prior order of the <u>commission</u> <u>department</u> or by voluntary agreement. This subsequent order, in providing for the allocation of the unit's production, must treat first the unit area previously created as a single tract and then allocate, in the same proportions as those specified in the prior order, the portion of the new unit's production allocated to the previous unit among the separately owned tracts included in the previously created unit area.
- (11) The <u>commission</u> <u>department</u> may approve additions to the unit of portions of a pool not previously included within the unit and may extend the unit area as reasonably necessary to prevent waste or to protect correlative rights. The <u>commission</u> <u>department</u> may approve exclusions from the unit area as reasonably necessary to prevent waste or to protect correlative rights.

An order adding to or excluding from a unit area must be upon just and reasonable terms.

- (a) An order that amends a plan of unit operations and adds an area to a previously established unit shall not become effective until the amended plan of unit operations has been signed and approved in writing by the owners who will be required to pay at least fifty-five percent (55%) of the costs of the unit operation in the area to be added, and also signed and approved in writing by the working interest owners of at least fifty-five percent (55%) of the production of the unit operations, and the commission department has made a finding in the order that the plan for unit operations has been so approved.
- (b) An order providing for an exclusion from a unit area may not become effective until an amended plan of unit operations excluding an area from the unit has been approved in writing by the owners in the original unit area that are required to pay at least fifty-five percent (55%) of the costs of unit operations, and also approved in writing by the working interest owners in the original unit area required to pay at least fifty-five percent (55%) of the production of the unit operations, and the commission department has made a finding in the order that the plan for unit operations has been so approved.
- (12) Operations, including the commencement, drilling or operation of a well upon a portion of a unit area, are deemed conducted on each separately owned tract in the unit area by the owner or owners thereof. That portion of a unit's production allocated to a separately owned tract in a unit area, when produced, is deemed produced from a well drilled on that tract. Operations conducted under an order of the commission department providing for a unit operation shall constitute fulfillment of expressed or implied obligations of a lease or contract covering lands within the unit area to the extent that compliance with those obligations is not possible without a further order of the commission department.
- (13) That portion of unit production allocated to a tract and the proceeds of sale for that portion are deemed the property and income of the several persons to whom or to whose credit that portion is allocated or payable under the order providing for unit operation.
- (14) A division order or other contract relating to a sale or purchase of production from a separately owned tract or combination of tracts remains in force and applies to oil and gas allocated to the tract until terminated in accordance with provisions of the order providing for unit operation, or in accordance with the terms of such division order or other contract.
- (15) Except to the extent that all affected parties agree, an order providing for unit operation does not result in a transfer of all or part of a person's title to the oil and gas rights in a tract in the unit area.
- (16) Except to the extent that all affected parties agree, all property, whether real or personal, that may be acquired in the conduct of a unit operation hereunder is deemed acquired for the account of the owners within the unit area and is deemed the property of the owners in the proportion that the expenses of the unit operation are charged.
- (17) The formation of a unit and the operation of the unit under an order of the commission department shall not be in violation of any statute of

this state relating to trusts, monopolies, contracts or combinations in the restraint of trade.

 SECTION 7. That Section 47-324, Idaho Code, be, and the same is hereby amended to read as follows:

- 47-324. RULES FOR COMMISSION —— ADMINISTRATIVE PROCEDURES. (a) The commission shall have authority to hear rulemaking proceedings, complaints filed with it pursuant to this chapter and appeals from the director's decision on an application filed pursuant to this chapter. The commission may prescribe rules governing the procedure before it, subject to the provisions of the administrative procedure act, chapter 52, title 67, Idaho Code.
- (b) In all cases where (1) there is an application for the entry of a pooling order or (2) there is an application for an exception from an established well spacing pattern or (3) a complaint is made by the commission or any party person that any provision of this act, or any rule or order of the commission is being violated, notice of the any hearing to be held on such application or complaint, the commission shall be served notice on the interested parties by certified mail, return receipt requested, or in the same manner as is provided in the rules of civil procedure for the service of summons in civil actions. Where the interested party is unknown or cannot be located, the commission shall serve notice by publishing at least one (1) notice of the hearing to such person in a newspaper in the county where the affected tract is located. Such notice must be sent, delivered or published, as appropriate, at least five (5) business days before the date of the hearing.
- (c) The commission may act upon its own motion, or upon the petition of any interested person. On the filing of a petition for a hearing concerning any matter within the jurisdiction of the commission, it shall promptly fix a date for a hearing thereon and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. Proceedings before the commission and judicial review of actions taken by the commission pursuant thereto shall be governed by the provisions of chapter 52, title 67, Idaho Code. Any person affected by an order of the commission shall have the right at any time to apply to the commission to repeal, amend, modify, or supplement the same Except as provided in section 47-320(1)(a), Idaho Code, and subsection (b) of this section, any request for an order related to oil and gas activities within the commission's jurisdiction, other than a civil penalty proceeding pursuant to section 47-325, Idaho Code, or other enforcement action by the department of lands or the commission, shall be made by application to the department of lands.
  - (i) The department shall notify the applicant within five (5) business days of receipt of an application if the application is administratively incomplete, and in such notice shall identify the missing item or items to be supplied in order to make the application complete.
  - (ii) A decision on the merits of the application shall be made by the director. The director's decision shall not be subject to any motion for reconsideration or further review, except for appeal to the commission provided in subsection (d) of this section.
  - (iii) For applications involving an order regarding unit operations or integration of a drilling unit, the department shall send a copy of the

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application and supporting documents to all known and located uncommitted owners, to all working interest owners within the unit, and to the respective city or county where the proposed unit is located. The mailing shall include notice of the hearing date on which the director will consider the application. The application shall be redacted pursuant to section 47-322(f), Idaho Code, and sent by certified mail. Upon request, the applicant shall reimburse the department for actual mailing costs incurred under this subsection. For any uncommitted owners and working interest owners who cannot be located, an applicant shall publish notice of any application for an order once in a newspaper in the county in which the affected property is located, and request the department publish notice on its website, within seven (7) calendar days of filing of the complete application. Only an uncommitted owner in the affected unit may file an objection or other response to the application, and the uncommitted owner shall file seven (7) calendar days before the hearing date provided in the notice.

- (iv) For applications not involving paragraph (iii) of this subsection, including exceptional locations, any uncommitted owner within the area defined in the application may file an objection or other response to the application, and the uncommitted owner shall file seven (7) calendar days before the hearing date provided in the notice.
- (v) The director shall hear an application within thirty (30) calendar days of the filing of a complete application. Discovery is not permitted. The director shall issue a written decision on any such application within thirty (30) calendar days of the hearing.
- The director's decision on an application for an order may be appealed to the commission by the applicant or any owner who filed an objection or other response to the application within the time required. An appeal must be filed with the director within fourteen (14) calendar days of the date of issuance of the director's written decision. The date of issuance shall be three (3) calendar days after the director deposits the decision in the U.S. mail, or the date on which he remits a decision electronically. Such appeal shall include the reasons and authority for the appeal, and shall identify any facts in the record supporting the appeal. Any person appealing shall serve a copy of the appeal materials on any other person who participated in the proceedings below, by certified mail, or by personal service. Any person who participated in the proceeding below may file a response to the appeal within five (5) calendar days of service of a copy of the appeal materials. The appellant shall provide the director with proof of service of the appeal materials on other persons as required in this section. The commission shall make a decision based on the record below as set forth in the written submittals of only the appellant and any other participating qualified person, the director's decision, and any oral argument taken by the commission at an appeal hearing.
- (e) Appeals to the commission shall be heard at the next regularly scheduled commission hearing, or at a special meeting of the commission if determined by the commission. In no case will a hearing be later than thirty (30) days after the filing of an appeal. The commission may take argument from, but not new testimony of, the appellant and other qualified participating persons at the hearing. The commission shall make a decision on the

appeal at the hearing and direct the department to issue a written order within five (5) business days of the hearing. The prevailing party shall draft a proposed written order and submit it to the department within two (2) business days. The final order of the commission shall not be subject to any motion for reconsideration.

- $\underline{\text{(f)}}$  If no appeal is filed with the commission within the required time, the decision of the director shall become the final order.
- g) Judicial review of actions taken by the commission shall be governed by the provisions of chapter 52, title 67, Idaho Code. Only a person qualified under subsection (d) of this section who has completed the appeal procedures set forth in this section shall be considered to have exhausted administrative remedies as required in section 67-5271, Idaho Code.
- (h) Each order shall include a reasoned statement in support of the decision, including a concise statement of facts supporting any findings, a statement of available procedures and time limits for appeals. Findings must be based exclusively on materials in the record. The applicant and any participating qualified person shall be served with a copy of the order. The order shall include or be accompanied by a certificate of service.
- (i) Every application shall be signed by the applicant or his representative, and his address shall be stated thereon. The signature of the applicant or his representative constitutes a certificate by him that he has read the application and that to the best of his knowledge, information and belief there is good ground to support the same. Each application shall be of such form and content and accompanied by the number of copies required by rule of the commission. Each application shall be accompanied by a fee as established in statute or rule.

SECTION 8. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.